

**MINUTES OF THE MILLVILLE
TOWN COUNCIL MEETING
February 15, 2017 @ 7:00 p.m.**

In attendance were Mayor Bob Gordon; Deputy Mayor Steve Maneri; Treasurer Susan Brewer; Secretary Valerie Faden; Council Member Steve Small; Town Solicitor Seth Thompson; Town Manager Debbie Botchie; and Town Executive Assistant Matt Amerling.

1. CALL MEETING TO ORDER

Mayor Bob Gordon called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE TO THE FLAG

Mayor Gordon and Town Manager Debbie Botchie congratulated Deputy Mayor Steve Maneri for receiving "Firefighter of the Year" for his service with the Millville Volunteer Fire Company (MVFC) at the 2017 Freeman Valor Awards ceremony on February 10, 2017.

3. ADOPTION OF TOWN COUNCIL MINUTES AND NOTES

- A. Adoption of Town Council Executive Session Minutes – December 13, 2016
- B. Adoption of Town Council Minutes – January 10, 2017
- C. Adoption of Town Council Workshop Minutes – January 24, 2017

Council Member Steve Small motioned to approve all three (3) sets of minutes. Deputy Mayor Steve Maneri seconded the motion. Motion carried 5-0.

4. FINANCIAL REPORT – Treasurer Susan Brewer

A. January 2017

Treasurer Susan Brewer read the Financial Report for the month ending 1/31/17.

January 31, 2017:

General Revenue:	\$ 50,296.	Restricted Revenue:	\$ 26,111.
General Expenses:	40,314.	Restricted Expenses:	216,838.

Secretary Valerie Faden motioned to approve the Treasurer's Report for the month ending January 31, 2017. Mr. Small seconded the motion. Motion carried 5-0.

5. ADMINISTRATIVE MATTERS

A. Administrative Report for January 2017 – Town Manager

There were no comments.

6. NEW BUSINESS

- A. Discuss and possible vote on a three (3) year extension on the approved final plans for the H&D subdivision on the corner of Beaver Dam and Substation Roads, tax number 134-16.00-

5.00 and 134-16.00-7.01. Synopsis: Final Plans for the H&D 57 unit townhouse community subdivision were approved in May of 2011. At the March 11, 2014, Town Council meeting, Council voted 4-0 (with 1 recusal) to approve a three (3)-year extension. The Town Code states a subdivision will be deemed null and void after three (3) years of recording unless substantial construction has commenced.

Mr. Peter DeMarie, of H&D Subdivision LLC, stated H&D Subdivision LLC is requesting an extension of three (3) years from the Town tonight, and this is not a good time for townhouses. Mr. DeMarie stated H&D has got a fifty-seven (57) unit project, and Mr. DeMarie and his other two (2) business partners are more land buyers in the sense they've bought this piece of land with the intentions of getting it zoned for townhouses, and at the time they did so, the market was good; but at this time, townhouses are simply not where H&D wants them to be. Mr. DeMarie stated the way the market is now, a person can buy a single family home for practically the same price as a townhouse. Mr. DeMarie further stated he and his business partners know they have to do something within this next 3-year period – if the extension is granted tonight – and either sell the land or develop the land themselves. Mr. DeMarie stated he thinks the land is good for the Town to approve the extension because the sewer is already allocated for fifty-seven (57) units, the water is there, and it does generate much more revenue for the Town as a bigger project.

Council Member Valerie Faden asked since the last extension was granted have there been any changes or construction done to the property. Mr. DeMarie stated no, but H&D has kept its permits up-to-date, they redrew the sewer plans because the engineering for the sewer went down, and they keep the land well-maintained. Council Member Steve Small stated he read the minutes from the last extension meeting (March 11, 2014) and H&D committed to having some construction during that first extension time period. Mr. DeMarie stated yes, but he has no control over the economy and his partners felt they would be able to sell it, but when H&D talked with someone like Ryan Homes, H&D found out Ryan Homes stopped buying townhouses because the market is that bad. Mr. Small stated his home community of Bishop's Landing has built and sold a lot of townhouses over the last three (3) years. Mr. DeMarie stated Beazer is very blessed if they are selling townhouses like that, and H&D will not have a community center but just a pool. Mr. Small stated his concern is when the Town goes through multiple extensions, the Town is outpaced by changes in the law and in the Code, and the Town has no ability to alter that so as to make the extension applicable to present law. Mr. Small stated Council recently denied a request for an extension. Mr. DeMarie asked if that extension was the requester's third request. Mr. Small stated yes, that extension request was off of nine (9) years, and this one tonight is off of six (6) years, and the 6 years have been very interesting in terms of changes in Code and in law. Mr. Small stated he is empathetic with the problems of buying land and not being able to develop it because the market is not right; however, Mr. Small believes Council shouldn't have projects being built under laws that – for the better of a decade – will be outdated. Mr. Small stated, for that reason – and not to disrespect Mr. DeMarie, Mr. Hocker or their third business partner – it is Mr. Small's intention to vote against the extension this evening.

Council Member Susan Brewer asked Town Solicitor Seth Thompson if the installation of a sewer constitute “substantial construction.” Mr. Thompson stated the Town’s Code defines “substantial construction” as “the right-of-way has been cleared, the roadway has been rough graded, the drainage system and the stormwater management facilities have been rough graded and erosion and sediment control measures are in place and being actively maintained, or construction in accordance with an approved construction sequence for the project.” Mr. Thompson asked Mr. DeMarie if H&D has actually installed the sewer. Mr. DeMarie stated no. Mr. Thompson stated since the sewer or the DelDOT entrance has not been put in, it would not count as “substantial construction.” Ms. Brewer asked if Council were to not grant the extension, what would H&D do next? Town Manager Debbie Botchie stated without the extension, H&D would have to come to the Town and “start from scratch” with the preliminary process; however, H&D is currently grandfathered in because they have a pre-existing nonconformity. Ms. Botchie further stated because residential planned communities (RPCs) now have to be a mixed use, H&D would have to completely change its plan, and that would cause an extreme hardship for H&D. Ms. Botchie stated the previously mentioned development which was refused an extension had already submitted a preliminary plan to the Town’s Planning & Zoning (P&Z) Committee with an entire revision, but that is not the case here; and, in Ms. Botchie’s mind, Council has already set precedent to allow two (2) extensions to a development in Town. Mr. Small stated he hears Ms. Botchie and he would hope the Town would stay within six (6) years because that time frame seems to Mr. Small to be an adequate time that perhaps should the Town have further development going forward under current law and current Code. Mr. Thompson stated the difficulty with having H&D start over under the new Code is they would have to rezone as an RPC and would have to redesign their site plan as to include a mixture of differing housing product. Ms. Botchie stated to redesign would be very costly due to the architectural changes. Mr. Small stated he understands that but, to Mr. Small, to allow something to be built which, six years ago, ceased to be permissible, seems a strange way to proceed, particularly since no substantial construction has been done and if something takes ten (10) years to build, by the time it is built, it would be a decade beyond when a law was changed. Ms. Botchie stated she can only offer that the Town’s zoning code is a “living document” and it can get changed at any given time and Ms. Botchie is a firm believer that new Councils should honor previous Councils’ votes – and, in this case, past Council has voted for granting a second extension. Mayor Gordon asked if this development would be the last one which would require a second extension. Ms. Botchie stated yes, and there have been two extensions given to two (2) other Millville developments, one of them being Bishop’s Landing. Mayor Gordon asked legally, if Council allowed two (2) extensions for two (2) developments in the past, and Council did not allow it for H&D, could Council be liable by the developer to say Council has done an extension for others but not H&D. Mr. Thompson stated the standard here is, according to the Code, “approving an additional extension should the applicant demonstrate unusual difficulty or circumstances beyond the applicant’s control,” so, in the past, the market has been beyond the applicant’s control or there’s been an unusual difficulty, Council would have to rationally explain why a basis was accepted in one case but not in another.

Mr. Thompson stated at some point, the Town will hit the threshold where its comprehensive

plan will require the Town to provide some dialogue in terms of providing affordable housing. Ms. Botchie stated yes, and twenty-eight-foot (28') townhomes – which will be in the H&D Subdivision – is not good in the market or Bishop's Landing would not have come back on more than one occasion to ask Council for permission to go from a twenty-eight-foot (28') to a forty-foot (40') villa in the townhomes. Mr. DeMarie stated H&D had talked with Beazer and their 28' product isn't selling in Bishop's Landing which is why Beazer is going with the villas. Mr. Thompson stated the comprehensive plan doesn't necessarily require the Town to set up affordable housing but the Town has to have a plan for setting up affordable housing, and the idea is a Town shouldn't consist of all one-size house on a huge acre lot, but there should be some kind of housing which is more affordable. Mr. DeMarie stated it is H&D's concept to have a small, quaint project where a person is "off the mainstream living," but the market just hasn't gotten there yet. Mr. Maneri asked if H&D would look at putting in bigger townhomes or villas on their land. Mr. DeMarie stated no, H&D would like to stay where they are and either sell the land or develop the land themselves, and H&D knows if they get the extension this time, there will be no third time.

Mr. Small asked if there are any other developments in Town where this kind of precedent of granting extensions could come back to Council. Ms. Botchie stated this development is the last one which doesn't have substantial construction and would need an extension. Mr. Small asked if the Town could place a stipulation to tonight's approval, making it so in the Town Code, Council would grant no more than one (1) three (3)-year extension for a total of six (6) years to all developments coming in for an extension request. Mr. Thompson stated Council can attach a condition to tonight's approval, but in terms of overall extension requests for other projects, Council can place such an amendment in section one-twenty-five-eight (125-8), which discusses the extensions and would basically put a cap on extensions. Mr. Thompson stated Council would not put in the amendment for all future projects in tonight's request, which just addresses H&D's project. Mr. Small asked if, in the future, Council could amend the Code so as to include the cap on extensions as he just proposed. Ms. Botchie stated H&D's project is the last one under the old Code, but any new project coming in – under the Town's new, revised Code – would have two (2) years to have substantial construction and if they don't have substantial construction, the development would have to "start from scratch" because there would be no extension available. Mr. DeMarie stated he is giving his word that in three (3) years, H&D would either sell the land, develop the land themselves, or there will be a problem.

Mr. Maneri motioned to approve the three (3)-year extension for H&D Subdivision LLC, with the condition this will be the last extension from the Town. Ms. Brewer seconded the motion. Motion carried 5-0.

Mr. Thompson stated he looked up section one-twenty-five-eight (125-8) of the Code and it states any subdivision project going up after October 2010 would only have two (2) years to begin substantial construction or its approval would be null and void; however, any subdivision project prior to the effective date of October 2010 would have the three (3) years and could gain an extension if Council approves it. Mr. Small stated the effective date of October 2010 was already in place before H&D's approval, which was in 2011. Mr.

Thompson stated H&D's final plan was approved in 2011, but H&D's preliminary plan was in before the October 2010 date, so H&D was already "in the pipeline," making H&D a part of the old Code ordinance and therefore eligible to an extension.

7. OLD BUSINESS

- A. Discuss and possible vote on Ordinance 17-05. *Synopsis:* Ordinance 17-05 will amend the Millville Town Code relating to Chapter 54, entitled "Dangerous Buildings," and Chapter 111, entitled "Property Maintenance," and will adopt the International Property Maintenance Code. The Town Council discussed the draft for Ordinance 17-05 at its January 24, 2017, Town Council Workshop meeting.

Town Solicitor Seth Thompson stated this ordinance gets rid of the "Dangerous Buildings" portion of the Town Code and instead adopts the International Property Maintenance Code (IPMC). Mr. Thompson stated the only change to the ordinance after the January 24, 2017, Town Council Workshop meeting was to change the maximum penalty fee of one-thousand dollars (\$1000.00) to ninety-nine dollars (\$99.00), which will be for each offense.

Council Member Steve Small motioned to approve Ordinance 17-05. Ms. Brewer seconded the motion. Motion carried 5-0.

- B. Discuss and possible vote on the Town of Millville Council Policies & Procedures Manual. *Synopsis:* The Town Manager has drafted a manual for Town Council to assist them by documenting accepted practices and clarifying expectations. Procedures have been established so that expectations and practices can be clearly enhanced. The Town Council discussed the manual at its January 24, 2017, Town Council Workshop meeting.

Mr. Thompson stated the only change made at the January 24, 2017, Town Council Workshop meeting was to change the word "majority" on page twenty-five (25) to "prevailing side." Ms. Faden stated her one recommendation would be to add the language to page three (3), under "Orientation of New Council Members," to state, "Each Councilmember will arrange a thirty (30)-minute conference call or meeting with the newly appointed member for a personal orientation within the first thirty (30) to sixty (60) days of their appointment." Ms. Faden stated she thinks this would be good so a new person coming onto Council will be able to be further educated on Town issues. Ms. Botchie stated she thinks that is a great addition.

Mayor Gordon motioned to approve the Millville Council Policies & Procedures Manual, with the amendment as presented by Ms. Faden. Mr. Maneri seconded the motion. Motion carried 5-0.

8. PROPERTY OWNERS/AUDIENCE COMMENTS AND QUESTIONS

There were no comments.

9. ANNOUNCEMENT OF NEXT MEETING – The next meeting will be the Town Council Workshop meeting on February 28, 2017. Deputy Mayor Maneri stated he and Town Code & Building Administrator Eric Evans attended a meeting with DelDOT this past Tuesday, February 7, in Dover, regarding the right-of-way for the Town's park. Mr. Maneri stated DelDOT stated they wanted to cut down the right-of-way from eighty (80) feet to thirty (30) feet, and, if DelDOT needs it in the future, they will need a ten (10)-foot lane with a five (5)-foot bicycle lane. Mr. Maneri stated the Town is waiting for its engineer to send up to DelDOT. Mr. Maneri further stated, on Friday, the Town's engineer was supposed to go before Soil and Conservation, and the Town has to wait for Soil and Conservation's approval. Mr. Maneri stated the Town got to keep the fence on its right-of-way, which is a good thing, and every time the Town has to get this plan approved, there will be a maximum of a forty-two (42)-day window just for DelDOT to approve. Mr. Maneri stated DelDOT feels the Town should not close the road (Dukes Drive) when construction begins because closing a road is too expensive for the Town.

Mr. Small stated since this is most likely his last meeting, he would like to say to Council and staff, it has been an honor to serve with them all, and Mr. Small thanks everyone for their time and respect.

10. ADJOURNMENT

Mayor Gordon motioned to adjourn the meeting at 8:03 p.m. Mr. Small seconded the motion. Motion carried 5-0.

Respectfully submitted,
Matt Amerling, Executive Assistant